

**ENTERED**

January 05, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

PAUL K. HOWE,

Plaintiff,

VS.

OFFICER JOHN DOE #1, *et al*,

Defendants.

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CIVIL ACTION NO. 3:12-CV-238

**ORDER**

The plaintiff, Paul K. Howe, is a former inmate of the Texas Department of Criminal Justice (“TDCJ”) (TDCJ #01473851); and while he was incarcerated he filed this action under 42 U.S.C. § 1983, alleging that correctional officers failed to protect him from another inmate and retaliated against him. After Howe filed a more definite statement of his claims (Dkt. 16), the remaining defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(c) (Dkt. 71), to which Howe did not respond. Judge Hoyt stayed the case pending a ruling on the defendants’ motion (Dkt. 75). After the case was reassigned to the undersigned judge, the Court lifted the stay and granted the Rule 12(c) motion as to the John Doe defendants (Dkt. 127). The Court denied the Rule 12(c) motion as to Major Felix Gordon and ordered Gordon to file a motion for summary judgment, if he wished, on or before January 15, 2018 (Dkt. 127 at p. 11). Howe filed a notice of appeal (Dkt. 132).

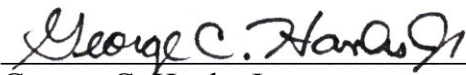
Howe requests leave to proceed *in forma pauperis* on appeal. That request (Dkt. 140) is denied. “An appeal may not be taken *in forma pauperis* if the trial court certifies

in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3) (*italics added*); *see also* FED. R. APP. P. 24(a)(3)(A). As defined by the applicable legal standard, this appeal is not taken in good faith. There is no final judgment in this case; the Court has only entered non-appealable interlocutory orders. The applicable test for determining good faith is an objective one concerned only with whether Howe “seeks appellate review of any issue not frivolous”—*Coppedge v. United States*, 369 U.S. 438, 445 (1962)—and an appeal from a non-appealable order is frivolous. *United States v. Powell*, 468 F.3d 862, 863 (5th Cir. 2006).

Howe’s motion for leave to proceed *in forma pauperis* on appeal (Dkt. 140) is **DENIED**. On a related issue, the District Clerk has informed this Court that other pending motions are preventing the expeditious forwarding of the appellate record to the Fifth Circuit. All other motions pending in this case are **DENIED** without prejudice to refiling.

The Clerk of this Court shall send a copy of this Order to the parties and to the Clerk of Court of the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit docket number is 17-41199.

SIGNED at Galveston, Texas, this 5th day of January, 2018.

  
George C. Hanks Jr.  
United States District Judge